



Actuarial & Employer Services Branch
P.O. Box 942709
Sacramento, CA 94229-2709
TTY for the Speech and Hearing Impaired - (916) 795-3240
(888) CalPERS (225-7377) FAX (916) 795-3005

December 14, 2010

AGENDA ITEM 5b

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION
COMMITTEE**

- I. SUBJECT:** Proposed Regulations for Publicly Available Pay Schedule and Written Labor Policy or Agreement
- II. PROGRAM:** Actuarial & Employer Services Branch
- III. RECOMMENDATION:** Staff recommends that the Committee recommend that the Board approve for publication the proposed amendments to clarify and make specific the requirements for publicly available pay schedule and labor policy or agreement.

IV. ANALYSIS:

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensation be limited to items included in a labor policy or agreement, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

The adoption of these proposed regulations will benefit the public, CalPERS employers, members and staff by reducing the uncertainty around whether or not a member's payrate and/or special compensation was publicly available and properly approved by the employing agency. These regulations will also help CalPERS enforce compliance with the compensation statutes, maintain a consistent practice of verifying payrates and special compensation for compensation reported by CalPERS employers, and encourage transparency and proper reporting of public employees' pay for retirement purposes. If employers fail to conform to the pay schedule requirements, these regulations also provide a means for the Board to determine an amount, thereby ensuring that the payrates used to calculate compensation earnable remain fair, equitable, and properly authorized under the law.

The proposed new section 570.5 and the amended section 571, subdivision (b) are included as Attachment A for the Committee's approval. If Board approval to proceed with the proposed changes to the regulations is received, CalPERS staff will initiate the publication of the Notice of Proposed Regulatory Action in the California Regulatory Notice Register. A minimum 45 day written comment period will be followed by a public hearing, if requested, which would be scheduled for a future BPAC meeting. After Board adoption, the regulations will be transmitted to the Office of Administrative Law for review, approval and filing with the Secretary of State and publication in the California Code of Regulations. The proposed changes to the regulations will become effective 30 days after filing with the Secretary of State.

V. STRATEGIC PLAN:

Implementation of these regulations is not a specific product of the Strategic or Annual plans but is part of the regular and ongoing workload of the Actuarial & Employer Services Branch and other affected branches.

VI. RESULTS/COSTS:

CalPERS may achieve cost savings as a result of decreased litigation and administrative appeals related to these issues, as employers and members become more aware of the requirements for a publicly available pay schedule and/or labor policy or agreement.

LORI MCGARTLAND, Chief
Employer Services Division

ALAN MILLIGAN
Chief Actuary

Attachment